APPROVED

STATE ADVISORY COUNCIL ON THE EDUCATION OF CHILDREN WITH DISABILITIES

January 12, 2007
Carmel Educational Service Center
Indianapolis, IN

ADVISORY COUNCIL MEMBERS PRESENT:

Bob Marra, Stephanie Beasley, Rich Burden; Dawn Downer, David Geeslin, James Hammond, Cathleen Hardy Hansen, Rebecca Kirby, Becky Kirk, Christina Endres, Karol Farrell, Marcia Johnson, Bret Lewis, Kathy Mears, John Nally, Gary Bates, Cheryl Shearer, Julie Swaim, Steve Tilden,

ADVISORY COUNCIL MEMBERS NOT PRESENT:

Bessie Henson, Mary Ramos, Jane Swiss, David Schmidt, Lilia Tentinty, Cynthia Diamond, Martha Farris

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

Brenda Alyea, Paul Ash, Kylee Bassett, Nina Brahm, Alexandra Curlin, Becky Reynolds, Sandra Scudder

GUESTS:

Sharon Knoth

VISITORS

Jennifer Akers (Parent), Gayle Foy (Parent/IPIN), Mary Jo Germani (ISHA), Susan Lockwood (IDOC), Loui Lord Nelson (R.A.I.S.E.), Patricia Pierce (NISEC), Rylin Rodgers (Parent)

INTERPRETERS:

Mary Alka and Rebecca Madigan

MEETING

D. Schmidt was unable to attend the meeting. J. Swaim chaired the meeting in his absence.

J. Swaim opened the meeting at 8:45 a.m.

MINUTES

J. Swaim discussed the issue of a meeting location that would be closer to I-465 and that this suggestion was omitted from the minutes from last meeting. She moved that the amendment be added. K. Farrell indicated that on page 7 – where J. Hammond discussed and K. Farrell is commenting – she would like the insertion of some to be added. Then on page 8, where the APC is discussed, K. Farrell asked that the minutes be amended to read that she asked whether the state has the authority to advise a local school corporation that they do not have to take the APC funds generated and then incorporate those funds into the proportionate share. These three amendments were accepted to last month's minutes. R. Burden moved to accept the minutes as amended. Seconded by D. Geeslin. Motion carried.

The minutes from the December 1, 2006, meeting, were approved as a correct document with amendments proposed by J. Swaim and K. Farrell.

PUBLIC COMMENT (Audience comments, if any)

No comments from visitors were made.

ARTICLE 7 DISCUSSION

B. Marra gave the SAC a brief overview of the agenda. He explained that under the due process rule, the IDEIA gives states the option of using the complaint process to enforce mediation and resolution agreements. After this overview, the SAC discussed the following issues:

511 IAC 7-23-1 Access to and disclosure of educational records

N. Brahm explained that the IDEIA incorporates certain provisions from the Family Educational Rights and Privacy Act (FERPA). FERPA applies to all students, not just students with disabilities. Rule 23 incorporates additional provisions from FERPA that are not set forth in the IDEIA. K. Farrell asked why the FERPA components are brought into Article 7 when this law applies to all students. N. Brahm said the DOE would like the public to have access to this information in Article 7 rather than having to also refer to FERPA. N. Brahm also explained that Rule 23 requires schools to obtain parental consent before

disclosing confidential student records. However, there are 3 exceptions to this rule.

J. Hammond asked if public records include grades, homework, IEP information or notes taken at a case conference committee (CCC). N. Brahm said that notes taken during CCC would be part of the record. N. Brahm indicated that there are many court cases litigating just what constitutes the educational record. Some litigation has found that any information that has been shared with another individual (as far as notes that have been taken) must become a part of the educational record. B. Marra said that all CCC notes are part of the record, and N. Brahm noted that the rewriting of Rule 27 will reflect that CCC notes are part of the CCC report. K. Farrell asked if the educational record included anecdotal and personal notes of the teacher. N. Brahm said that unless it is part of an educational evaluation observation, they are not part of the record. K. Farrell asked when do e-mails pertaining to a student become part of the student's educational record. A. Curlin said when an e-mail refers to the student; some people do consider that part of the record. There is no official answer. N. Brahm offered to research this issue. R. Burden indicated that his office uses the language on the first page – if notes remain the sole possession of the maker of the record, they are not considered part of the educational record. But the minute notes are shared with another individual they become part of the student's educational record. R Burden added that if it is a teacher's note that just stays on her desk, he feels that it is not a part of the record.

N. Brahm stated that an important distinction between the IDEIA and FERPA is that under the IDEIA, schools cannot charge parents a fee for copies of the IEP and the educational evaluation. K. Mears asked if the language includes nonpublic schools. N. Brahm stated that language has been added to Rule 25 to make this provision applicable to parents of children who attend nonpublic schools. K. Mears indicated that such language should be in one location otherwise the parent may miss the language. R. Kirby said that it would help because parents don't always know where to look in Article 7. J. Swaim referred to the e-mail message received from the public comment mailbox that speaks to how complicated the language is in Article 7. The more we can simplify the language, the better. N. Brahm said that she added "including parents of a student or eligible student attending non-public schools."

N. Brahm explained that the term "eligible student" is a FERPA term that means the student has reached the age of 18. C. Endres said that this term does not cover "unattached youth" under the McKinney-Vento Act (an unattached youth can be a 7 to17 year-old who lives on their own). These students will have problems trying to get their record. B. Marra stated that C. Endres and N. Brahm should work together to propose new language to reflect homeless youth. S. Beasley suggested using the term "emancipated" so that it doesn't infringe on "foster parent" rights. C. Endres asked if S. Beasley could send the wording to

her and N. Brahm before they start word-smithing. B. Marra suggested that after C. Endres and N. Brahm make corrections that S. Beasley review.

G. Bates asked for clarification on when a child is 18 and is asking for a copy of his educational record does it have to be in the mode of communication of the child as it has to be in the mode of communication of the parent. N. Brahm said that under Article 7, the definition of parent includes the child who is 18. B. Marra stated that they will go back and research the different languages, as there are over 250 languages spoken in Indiana.

D. Downer indicated that we need to be very careful when we are looking at the definition of parent. The federal definition of parent is much broader than what we think of when we look at Article 7. C. Endres indicated that when you look at homeless students who are teenagers the issue becomes somewhat complex. There are a large number of homeless youth who have no adult 'attached' to them. D. Downer asked if these children that C. Endres is describing would be required to have an educational surrogate parent assigned to them by the school. C. Endres stated that the answer is yes, but due to the high mobility of the child and family who is homeless this is not always possible. If the child is a run-away they may not stay in one location long enough to have the educational surrogate parent assigned to them. The attempt may be there but in reality a lot of kids are falling through the cracks.

B. Kirk asked when a surrogate parent is appointed; does the surrogate parent get the copy of the record? N. Brahm answered yes because the Article 7 definition of parent includes a surrogate parent.

N. Brahm referred to the addition that if the court has sealed the record, any agency who obtains a copy of the record cannot disclose the record since it has been sealed. J. Nally added that if the court seals the record then it does not go to any other person except the people involved in the process. J. Nally said that similar records can be requested. S. Beasley stated that all the records in her area are open to the public excluding when they involve the identity of a specific child. B. Marra asked that S. Beasley and J. Nally ask their legal council what their procedure or requirements are with regard to this issue. B. Lewis asked about the language 'shall not be disclosed' – should it not read that it will not be disclosed to individuals not directly involved in the lawsuit? Nina stated that only the parties involved have access to the record. B. Lewis said that the language should be simplified. B. Kirk asked for clarification on what is being sealed. Who would have access to the educational record for the child? N. Brahm stated that sealing the record would prevent people who are not parties to the lawsuit to have access to the child's educational record (e.g., the press). B. Lewis questioned if the records are electronically transferred. J. Nally stated that files are electronically transferred to his office. N. Brahm said that we have no control over court procedures.

N. Brahm referred to language from IDEIA that is optional. This language states that when a child is leaving one school to attend a different school, any current or previous disciplinary action is to be included in the educational record. Discussion ensured as to whether the council wanted to remove this provision from Article 7, and only require schools to provide information regarding suspensions and expulsions. G. Bates and J. Nally said that they would like to keep the provision in because they want to know as much about the student as possible. G. Bates stated that his school tracks issues where the child presents a risk to the teacher or other students. D. Geeslin said that they have had students enrolled at ISD without the information, and when they call the former school they find out that the child had numerous behavioral issues. M. Johnson said that she agrees with the language but we are in a legal period where law suits are common and people are cautious about the language they put in the records for fear of being sued. B. Marra said that the language in Art. 7 states that the amount of information shared by the former school defined by local policy. J. Nally reminded the SAC that the CCC must convene within 10 days of enrollment. R. Burden stated that he finds it reassuring that we would be doing the same thing for all children. R. Burden added that if the language is not referring to all children, then he would like it removed. B. Marra clarified that the type of information shared has to be the same information that is disclosed for all students, not just students with disabilities.

R. Kirby asked about instances when the school has a BIP for a child that is not appropriately implemented and the parent moves the child to another school district. Is it fair that the behavioral incidents be forwarded when in reality, it is because the school was not following the plan that had been laid forth? G. Bates said he would still like to know about this and have a copy of the plan so that his school can use it as a starting point otherwise, they know nothing about the child. G. Bates reminded the SAC that this would not necessarily be applicable for students who move in from another state as each state will develop their own interpretation of IDEIA. D. Geeslin stated that it is important that we reduce the amount of time we spend assessing a child when, had that information been forwarded it would at least provide the receiving school with a starting point. J. Hammond asked for a point of clarification that the incidents being forwarded must be violations of the school's disciplinary code. B. Marra said that he has never seen an educational record that included events other than suspensions, violations of school rules, and excessive tardiness and so forth; so in his mind the answer would be yes. This is an issue that was seen with students enrolled in Charter Schools. Parents would enroll the child in a Charter School and not inform them of the child's history because they wanted him/her to have a clean slate. Then the Charter found out later (after the fact) that there were issues that could have helped with the planning and programming for the child. B. Kirk expressed concerns that their decision may still be based on inappropriate or inaccurate information. A discussion with specific examples ensued. S. Beasley recommended that suspensions and expulsions be automatically included, but

disclosure of other types of disciplinary action should require parental permission before being released.

B. Marra stated that there are legal procedures a parent can take to amend educational records if there are items in it that they do not want shared, however the parent would have to know how to do this. What is the fine line of what is too much information and what is too little information to share with the receiving school?

G. Bates cautioned using language that puts disabled students on the same plane at general education students. C. Endres said that by keeping the language in, it holds the school accountable to serve the student.

B. Lewis made a motion to approve the inclusion of the optional language at Rule 38 subsection (n) in Article 7. G. Bates Seconded. Motion carried.

16 approved, opposed, 2 abstained.

N. Brahm went on to explain parental consent to transfer student records. K. Mears said that private school needs to be changed to non-public. N. Brahm said that she would make a search for the term throughout the rule.

N. Brahm referred to the 13 exceptions in Article 7 where you do not have to have parental consent to disclose a record.

M. Johnson noted in some situations students transfer from non-public schools and the parent owes the school money. In this situation, the private school will not send the public school the record. M. Johnson asked whether the private school could refuse to send the record. K. Farrell asked if it is the public school's responsibility to get the student records from the nonpublic schools. B. Marra said that the Division would research this issue.

S. Beasley inquired which FERPA exception allowed her agency, the Department of Child Services, obtain student records when investigating educational neglect or abuse and neglect in an educational setting. N. Brahm said that she would research which of the exceptions applied in this situation.

N. Brahm said that exception #8 the issue of sealing the record arises again. N. Brahm indicated that she may use the language to amend the earlier language that B. Lewis requested be simplified.

B. Lewis motioned to approve language in section (o) through (v) with the note of non-public schools being added. Marcia Johnson seconded.

16 Approved, 2 Opposed. Motion carried

B. Kirk asked if the information requested by S. Beasley would be brought back to the table. B. Marra said yes. B. Marra also added that this is not the final vote.

511 IAC 7-23-2 Procedures for amending educational records

N. Brahm discussed the "shall" being changed to "must." N. Brahm also explained that under subsection (2), if the parent disagrees with something in the child's education record, a request can be made to amend the record. This is not a typical hearing that we think of in special education, it is a local hearing conducted by the LEA. If the LEA refuses, the parent still has the right to add a statement to the record.

G. Bates said that this may be another area for discussion of parental consent. B. Marra concurred.

K. Farrell moved to accept the language identified under 511-IAC 7-~~23~~37-2. J. Nally seconded.

Approved, unanimous

Motion carried

511 IAC 7-23-3 Confidentiality safeguards in collection, maintenance, and destruction of educational records

N. Brahm stated that section 3 pertains to how long records must be maintained. This brings in language from the Educational Department General Administrative Rules or EDGAR.

J. Hammond asked with regard to how the destruction of records was overseen. N. Brahm stated that this issue is discussed in section (d)(3) of this rule.

K. Farrell moved that the language be approved. J. Nally seconded.

Approved, unanimous

Motion carried.

511 IAC 7-24-1 Method for determining need for educational surrogate parent

N. Brahm stated that two changes in this rule pertain to: (1) homeless students and (2) the fact that judges can appoint educational surrogate parents (ESPs).

R. Marra indicated that his office is working with the Juvenile Justice Improvement Committee to ensure that the school and the judge communicate and they aren't both trying to assign an ESP. N. Brahm noted that the comments to the federal regulations indicate that whoever appoints an ESP first 'trumps," but there needs to be a systematic method of communication to ensure this conflict doesn't arise. It would be problematic to have a system where one can pick or choose which educational surrogate they 'want'. It is not a rule issue, it is a procedural issue. K. Farrell discussed procedure in her school. A discussion ensued regarding whether the co-op or the LEA should appoint the ESP. The consensus was that the locating and training of educational surrogates tends to be a role/function of the special education director. J. Nally asked if the language in section 1(b) is in current Article 7. R. Marra stated that he recalls this issue: whether the Department of Correction (DOC) can appoint the actual parent as the educational surrogate parent. S. Beasley would like additional clarification on ward of the state. She stated that last year the term ward carried a different connotation. When the child is made a ward for CHINS (Child in Need of Services) it brings in a different perspective. She would like to clarify with her legal council that this language does not impede her agency's work. B. Marra said that the judge can restrict different parental rights (e.g., the right to make medical decisions). The order may specifically limit or not limit a parent's right to make educational decisions. The school needs to know which rights are specifically suspended or restricted. B. Marra asked that J. Nally and S. Beasley confirm the policy with their legal council.

R. Burden questioned the language "may be appointed." Who would do the appointing? C. Endres said it would be the school. Homeless children are not always involved with the legal system. C. Endres spoke with regard to the issue that the large majority of homeless children are not connected to the court and are highly transient. Therefore it is the school who appoints an educational surrogate parent for that child. C. Endres added that under McKinney Vento, if a homeless child shows up to attend school they are to be allowed in school.

N. Brahm discussed the language under subsection (b)(1) regarding who is allowed to be a surrogate parent S. Beasley asked for clarification: if the surrogate parent is the foster parent do they have the same rights as the birth parent? N. Brahm said yes under IDEIA they would have the same rights as the birth parent. S. Beasley indicated that she feels that foster parents need surrogate parent training. B. Lewis asked that this section be tabled until we have more information regarding what constitutes a ward and the whole language of wardship. D. Downer indicated for First Steps it isn't an issue of ward or not ward. If the parent is available and is willing to participate they may sign as the parent as long as the court has not restricted parental rights. It is an issue of when a child is placed into alternate care, or if any restrictions have been placed on the birth parent's rights. Often times the foster parent won't know; it is the case manager who would have that knowledge. M. Johnson said that often

the foster parent does not have that information. B. Kirk said that a lot of times the foster parent does not have the training, as well as the parent.

Discussion was tabled until the next meeting of the SAC.

RULE 29 DISCIPLINE PROCEDURES

511 IAC 7-29-1: ~~Suspension~~ Removal

A. Curlin explained that the term removal refers to the student being removed from their current setting. This term aligns with the federal language. If a removal is for more than 10 days then on the 11th day it is considered a change of placement.

M. Johnson asked with regard to change of placement, if a child goes back to a special education class room because of the IEP, is this considered a change of placement. A. Curlin responded that no, if the removal is per the IEP, then it is not considered a removal. A. Curlin said that a removal is a unilateral decision to have a student removed because of discipline. A short term removal that is not per the IEP is a removal. B. Kirk asked if there are any other words besides removal that could be used. S. Tilden stated that the language is confusing and suggested a definition of removal in the rule. A. Curlin said that whenever a child is removed from their educational setting it is considered a removal.

B. Marra said that if a student is in a detention room and just sitting in the room without any work, or there is not a teacher, it would be a removal, but if the student is in a room with a teacher and they have work to do, then that is not considered a removal. N. Brahm added that the comments to the federal regulations state that schools do not need to replicate everything about the educational day. G. Bates asked whether a child in a time out situation constitutes a removal. B. Marra said that it is not, but this would depend on how many times this occurs. D. Geeslin inquired if he had to put discipline type measures in all of the IEPs for the students at the deaf school? B. Marra said that common sense has to be applied to decide if multiple occurrences dictate putting such measures in an IEP.

A. Curlin explained subsections (e) and (f): FAPE after the 10th day may not look anything at all like the FAPE prior to the 10th day. Regardless of how it looks, the child must be provided services that meet the three requirements at subsection (f). A. Curlin stated that in the past, you could only place the child into an interim alternative education setting (IAES) for drugs or weapons. Now, as set forth in subsection (g), a student can be placed into an IAES after day 10 so long as the requirements of subsection (f) are met.

B. Lewis asked if a child with an IEP is late to school 38 times, is this a change of IEP would that be considered a complainable issue for the school. A. Curlin said no. B. Lewis asked if it is a violation of an IEP. A. Curlin said that a parent

cannot violate a student's IEP. S. Beasley said that the Department of Child Services (DCS) refuses to investigate this as child neglect. S. Beasley added that she cannot investigate whether there is educational neglect; it is incumbent on the school to document that parents inaction has resulted in educational neglect before her agency office can investigate. It is an area where the school must have documentation and substantive proof that the parent's inactions have caused educational neglect.

A. Curlin went on to discuss subsection (i). The proposed draft changes the language from teacher of record to, "at least one of the student's teachers." This would allow the most knowledgeable best person to be involved in the process.

R. Burden asked what is it that the school should be looking at when determining which teacher should be involved. Is there some criteria determining who is the most appropriate teacher for that child? B. Marra said that this is the reason for the change so that the child's needs would be considered.

A. Curlin explained that current Article 7 allows a case conference committee to determine whether a pattern of removals constitutes a change of placement, but the IDEIA allows the LEA to make this decision. B. Lewis asked if it would make more sense to rearrange the language rather for better flow. B. Marra said that if SAC chooses this can be re-ordered.

R. Burden asked what the higher standard is: the case conference committee making the determination or the principal making the determination. B. Marra stated that the case conference committee would be the higher standard. It would be 'going beyond' federal requirements and would necessitate approval by the State Board of Education. However, keep in mind too that this is a topic that has been hotly debated at the national level. The feds have given us more flexibility so it would require substantial explaining as to why we went beyond the federal requirements.

The discussion of suspensions because of weapons and drugs ensued.

The discussion was tabled until next meeting. The SAC will be provided a copy of the Indiana statute on suspension and expulsion.

511 IAC 7-29-2: Expulsion

A. Curlin explained that expulsion is a change of placement. Notice of change of placement has to be given to the parents and procedural safeguards must be given to parents. A. Curlin said that homebound services or a different school is considered a change of placement. K. Farrell asked that SAC be provided data regarding the number of IAES placements used this past school year.

B. Marra said that the school has the flexibility to remove, but it must be appropriate or the parent has the right to hearing. R. Kirby said that even though the parent is at the case conference committee and the decision was made, do they not have a right after the decision to change the placement without parental consent. B. Marra said that if the school thinks they have to make the decision to place them at an alternative placement when the parents are unable to attend the CCC, then the school may do that but it is still subject to hearing. R. Kirby asked if the words "case conference committee' are in the federal regulations. N. Brahm said that this language is in federal law for removal of a student for (45) days because of drugs, weapons or serious bodily injury.

A. Curlin spoke with regard to an IHO determining placement to either return the student to the original placement or put him in a different educational setting. There will be a hearing either way.

J. Nally stated that the language in (c)(3) at the end "does not recur," seemed rather strong language it was explained that this is federal language. K. Farrell also inquired if this could lead to a hearing. B. Marra said that it would be going beyond federal language to make this less stringent, but the SAC could choose to pursue this.

K. Farrell requested the number of expedited hearings. A. Curlin said that up until last July (2006) there was only one (1). Since the fiscal year began, there have been five (5) expedited due process hearings. They were not all related to weapons, drugs or serious bodily injury.

B. Kirk asked if there are numbers of the incidents for both general and special education students (weapons, drugs and serious bodily injury)? B. Marra stated the data will be provided to SAC.

Discussion was tabled until next meeting.

511 IAC 7-29-3: Interim alternative educational setting; weapons and drugs

A. Curlin said that "serious bodily injury" is not currently in Indiana law, but it is in the IDEIA. Currently, if the student is removed to an alternative educational setting, the parent has the right to refuse that setting because parents must consent to a change of placement. Draft language for this section would allow schools to unilaterally remove a student for weapons, drugs, and serious bodily injury without parental consent. After the school makes the decision, the student is placed but the parent has the right request due process.

No discussion or vote on this language at this time.

511 IAC 7-29-4: Interim alternative educational setting; dangerous student

A. Curlin stated that when the student is a dangerous student, the parent and school must reach consensus on the IAES (it is a case conference committee decision requiring parental consent). There are four instances where you can use an IAES drugs, weapons, and serious bodily injury (unilateral) and dangerous student (case conference determination). The reason that dangerous student must be agreed upon is that it is so subjective (and it is not defined in the federal regulations). There is nothing that prohibits a school for seeking injunctive relief if it believes the student is a dangerous student and they cannot get the parent to agree to the placement (an example might be a threat to bomb the school when the school feels the child may actually follow through and the parent won't agree to an IAES).

G. Bates asked for clarification of expedited hearing in this matter. N. Brahm said that if a student has been in an IAES for guns, weapons, or serious bodily injury, and the school asked for expedited due process because the student was is dangerous, the child may return to the school unless the school asks the independent hearing officer to extend the 45 days of the IAES placement. The school has the burden to prove that this child is dangerous. B. Marra added that this is where those 10 days of removal may come into play if you for see the child being a dangerous student.

B. Kirk asked with regard to the alternative schools, how does this play out. C. Endres said that it is not likely that you will find many special needs kids in an alternative education program. They are more likely place in an alternative placement. The term alternative school is often confused with the term interim alternative education setting.

This issue was table for the next meeting.

ARTICLE 7 COMMENTS FROM THE PUBLIC

No comments were made.

OTHER BUSINESS

B. Marra said that West Central would like to present their comprehensive plan. MSD of Pike Township needs SAC approval to leave the cooperative. B. Marra asked whether the SAC would like to address this issue in February or March, in the morning or afternoon.

M. Johnson said that she would like another meeting to discuss the SAC's role in approving changes to comprehensive plans.

K. Farrell said that it would be in the best interest of the children for the SAC to address this matter as soon as possible.

R. Kirby inquired with regard to location, dates and time of the next meeting. J. Swaim asked about the Washington Township location. K. Farrell said that she would check the status of available space. She further indicated that use of the space would be contingent upon the board's need to use the meeting room. S. Beasley offered the Department of Child Services conference area at 4750 North Keystone. The administrative assistant will follow-up on this location.

B. Marra thanked A. Curlin for her time at the Division of Exceptional Learners.

MEETING ADJOURNED AT 3:00 P.M.